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10 Attorneys for Plaintiffs,
11 SONY BMG MUSIC ENTERTAINMENT;
12 ARISTA RECORDS LLC; INTERSCOPE
13 RECORDS; BMG MUSIC; UMG RECORDINGS,
14 INC.; and WARNER BROS. RECORDS INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; ARISTA
RECORDS LLC, a Delaware limited liability
company; INTERSCOPE RECORDS, a
California general partnership; BMG MUSIC, a
New York general partnership; UMG
RECORDINGS, INC., a Delaware corporation;
and WARNER BROS. RECORDS INC., a
Delaware corporation,

Plaintiffs,
v.

JOHN DOE #8,
Defendant.

CASE NO. C 07-04854 WDB

The Honorable Wayne D. Brazil

***EX PARTE APPLICATION TO EXTEND
TIME TO SERVE DEFENDANT AND
[PROPOSED] ORDER***

1 Plaintiffs respectfully request, pursuant to the Federal Rules of Civil Procedure, Rules 4(m)
2 and 6(b)(1)(A), that the Court grant an additional 90 days to serve Defendant with the Summons and
3 Complaint. As further explained below, Plaintiffs have identified the Doe defendant in this case and
4 the parties have reached a provisional settlement; Plaintiffs thus seek additional time to effectuate
5 service in the event the settlement fails. In support of their request, Plaintiffs state as follows:

6 1. The current deadline for service of process is January 18, 2008. The initial
7 case management conference is set for April 3, 2008, at 4:00 p.m., as continued by the Court's Order
8 of December 20, 2007 upon Plaintiffs' request.

9 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant
10 John Doe #8 ("Defendant") on September 20, 2007. Plaintiffs did not have sufficient identifying
11 information to name Defendant in the Complaint, but were able to identify Defendant by the Internet
12 Protocol address assigned to Defendant by Defendant's Internet Service Provider ("ISP") – here, San
13 Francisco State University.

14 3. In order to determine Defendant's true name and identity, Plaintiffs filed their
15 *Ex Parte* Application for Leave to Take Immediate Discovery on September 20, 2007, requesting
16 that the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

17 4. The Court entered an Order for Leave to take Immediate Discovery on
18 October 1, 2007, which was promptly served upon the ISP along with a Rule 45 subpoena. On
19 November 16, 2007, the ISP responded to Plaintiffs' subpoena, providing Plaintiffs with identifying
20 information including Defendant's name, telephone number, and address.

21 5. Upon receipt of this information from the ISP, Plaintiffs sent a letter to
22 Defendant notifying her of their claims for copyright infringement and encouraging her to make
23 contact to attempt to amicably resolve this matter. In response to that notification, settlement
24 discussions took place and Plaintiffs believe that a settlement has been reached. Settlement
25 documents were sent to Defendant on December 19, 2007, which have not yet been returned signed
26 by Defendant.
27

1 6. If Defendant returns the signed settlement documents by February 1, 2008 or
 2 shortly thereafter, Plaintiffs will file appropriate dispositional documents. If she does not, Plaintiffs
 3 plan to file a First Amended Complaint naming her individually as the defendant in this case, and
 4 then proceed to serve process upon her.

5 7. Given the circumstances of this case, Plaintiffs respectfully request an
 6 additional 90 days to effectuate service.

7 8. Plaintiffs submit that their efforts to give written notice to Defendant of their
 8 claim and subsequent efforts to resolve the case without further litigation constitute good cause for
 9 any delay in perfecting service. *See Ritts v. Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1479
 10 (N.D. Ga. 1997) (stating good cause standard for service extensions). This Court has discretion to
 11 enlarge the time to serve even where there is no good cause shown. *Henderson v. United States*, 517
 12 U.S. 654, 658 n. 5 (1996). Here, Plaintiffs acted in good faith to try to settle this matter with
 13 Defendant without potentially damaging her credit by naming her in the suit as well as attempting to
 14 avoid the cost of further litigation for both parties. Moreover, unlike a traditional case in which the
 15 defendant is known by name and efforts to serve can begin immediately after filing the complaint, in
 16 this case Plaintiffs first had to obtain the identity of the defendant through the subpoena to the ISP.
 17

18 9. Because the copyright infringements here occurred in 2007, the three-year
 19 limitations period for these claims has not expired. *See 17 U.S.C. § 507(b)* (2000). There can thus
 20 be no prejudice to the Defendant from any delay in serving the Complaint.

21 10. Plaintiffs will provide Defendant with a copy of this request and any Order
 22 concerning this request when service of process occurs.

23 Dated: January 16, 2008

HOLME ROBERTS & OWEN LLP

25 By: _____ /s/ *Matthew Franklin Jaksa*
 26 MATTHEW FRANKLIN JAKSA
 27 Attorney for Plaintiffs

ORDER

Good cause having been shown:

IT IS ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to April 17, 2008.

Dated: _____

By: _____

Honorable Wayne D. Brazil
United States Magistrate Judge